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No.

The Supreme Court of the United States

October Term, 1994

STANLEY SOLOMON
Petitioner

v.

UNITED STATES OF AMERICA
and
EDGAR AUERSWALD
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

Stanley Solomon
Petitioner Pro Se
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Kew Gardens, N.Y. 11415
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15 pp

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Table of Contents

Judgment of Court of Appeals	Appendix A
Denial of petition for Rehearing	Appendix B
Judgment of District Court	Appendix D
Text of Constitution and Statutes	Appendix F

APPENDIX A

Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 13th day of April, one thousand nine hundred and ninety-four.

PRESENT:

HON. WILFRED FEINBERG,

HON. ROGER J. MINER,
HON. DENNIS G. JACOBS,
Circuit Judges.

STANLEY SOLOMON,
Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,
Defendant-Appellee

EDGAR AUERSWALD,
Defendant

ORDERS
93-6177
93-6249

UPON CONSIDERATION of this appeal from a judgment of the United States District Court for the Eastern District of New York, it is hereby

ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is AFFIRMED.

Plaintiff- Appellant Stanley Solomon, pro se, appeals from a judgment, dated August 18, 1993, of the United States District Court for the Eastern District of New York (Nickerson, J.), dismissing his complaint in toto for lack of subject matter jurisdiction.

In 1992, Solomon commenced two separate actions in the district court, one against the United States and the other against defendant Edgar Auerswald. In his complaint against Auerswald, Solomon alleges that Auerswald is an "evil genius" who is employed by an unspecified federal agency. Solomon alleges that, for approximately eighteen

years, Auerswald "arranged to have papain (a proteolytic enzyme) added to all [his] food and drink" in order to kill him and have it appear that Solomon had died of natural causes.

Solomon also contends that Auerswald "caused the implantation of an eavesdropping device in plaintiff's teeth during dental treatment." The effect of this implantation was " to allow Auerswald to hear and record what I said to myself when I thought, since I apparently talk to myself under my breath when I think." Solomon further contends that Auerswald: (1) eavesdropped on his telephone conversations, with the help of New York Telephone; (2) caused him to be fired from several jobs; (3) told people that Solomon was mentally deranged; (4) caused Solomon's wife to divorce him; (5) had an accomplice make noise above(sic) Solomon's apartment to prevent him from sleeping; and (6) removed legal papers from Solomon's car.

Solomon's complaint against the United States appears to stem from the wrongful acts attributed to Auerswald and includes claims brought pursuant to (1) the Federal Tort Claims Act (FTCA); (2) Bivens v. Six Unknown

[Named] Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971); and (3) 42 U.S.C. para 1983 &1985. On January 20, 1993, Solomon moved for a preliminary injunction to enjoin the United States and its employees from " following plaintiff, causing anything to be added to plaintiff's food supply, from eavesdropping in any fashion on plaintiff, from intervening in any way in plaintiff's life and from further defaming plaintiff." On January 29, the United States moved to dismiss the complaint on the grounds that: (1) Solomon had failed to meet the prerequisites of the FTCA; (2) the United States was an improper defendant under section 1983 and 1985; (3) the United States was an improper defendant in a Bivens action.

On June 4, 1993, the district court : (1) consolidated the two cases brought by Solomon; (2) allowed Solomon to amend the basis of jurisdiction to include 28 U.S.C. para 1331, 1332 and 5U.S.C. para 702, 703, the Administrative Procedure Act ("APA") ; (3)deleted 42 U.S.C. para 1983 as a basis for jurisdiction; (4) dismissed the complaint against the United States for lack of subject matter jurisdiction under the provisions of the FTCA; (5) dismissed

the section 1985 complaint against Auerswald for lack of jurisdiction; and (6) deferred decision on whether it had subject matter jurisdiction over Auerswald in the Bivens action so that Solomon could submit evidence that Auerswald did, in fact, exist.

On June 28, 1993, Solomon moved for reargument of his motion for a preliminary injunction. On August 18, the district court denied the motion and dismissed all remaining claims against Auerswald, thereby dismissing Solomon's entire complaint.

On appeal, Solomon argues that an injunction should have been issued by the district court, pursuant to section 702 of the APA. However, two requirements must be satisfied before a litigant can bring an action under the provisions of the APA. First, the complainant must specify the agency action that affected him. Second, that party must also show that he has suffered a "legal wrong" because of the agency action or is "adversely affected or aggrieved" by the agency action "within the meaning of the relevant statute." Lujan v. National Wildlife Fed., 497 U.S. 871, 883 (1989).

In this case , Solomon fails to identify either the federal agency that purportedly employs Auerswald or any legal wrong that he has suffered as a result of agency action. Accordingly, Solomon has failed to meet the requirements of the APA and his claim was properly dismissed.

Solomon also challenges the dismissal of his claims brought pursuant to the FTCA. Under the provisions of the FTCA, the United States has consented to suits for money damages where the actions of federal employees, acting within the scope of their employment, would constitute a tort if committed by a private actor. See Hurwitz v. United States, 884 F.2d 684, 686 (2d Cir.1989), cert.denied, 493 U.S. 1056 (1990). A prerequisite to filing an action pursuant to the FTCA is that the claim first be presented to a federal agency for processing. 28 U.S.C. para 2675(a). In his briefing to this Court, Solomon concedes that he did not file a claim with any federal agency. Therefore, the district court properly dismissed this claim.

With regard to Solomon's claims against Auerswald, he failed to present any evidence to the district court that Auerswald actually exists and, if he does, what

federal agency, if any, employs him. On this appeal , Solomon fails to proffer any documentation to support his allegations. The district court properly dismissed all claims.

HON. WILFRED FEINBERG

HON. ROGER J. MINER

HON. DENNIS G. JACOBS

Circuit Judges

APPENDIX B

Denial of Petition for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the fourteenth of June one thousand nine hundred and ninety-four.

STANLEY SOLOMON,
Plaintiff-Appellant,

v.

Docket No. 93-6177
93-6249

UNITED STATES OF AMERICA,
Defendant-Appellee,

EDGAR AUERSWALD,
Defendant

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by pro se appellant, Stanley Solomon

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR

THE COURT,

GEORGE LANGE III, CLERK

By:

Carolyn Clark Campbell

Chief

Deputy Clerk

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

Stanley Solomon,

Plaintiff

92 CV 2653

V.

MEMORANDUM AND Order

United States of America and
Edgar Auerswald,

Defendants

----------X

Stanley Solomon,
Brooklyn(sic), New York
Plaintiff pro se.

Zachary W. Carter, United States Attorney
(Jorin G. Rubin, of counsel)
Brooklyn, New York
for defendant United States.

Nickerson, District Judge:

Plaintiff Stanley Solomon brought this action against defendants United States and Edgar Auerswald, alleging that that Auerswald , while an employee of the United States government, attempted to murder him, interfered with

his employment, invaded his privacy, interfered with his court cases, and harassed him in countless other ways during the past twenty-five years.

By Memorandum and Order dated June 2, 1993 the court denied Solomon's request for a preliminary injunction and dismissed claims against the United States under the Federal Tort Claims Act, the Administrative Procedures Act, 42 U.S.C. para 1985 and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999 (1971). The Court also dismissed a claim against Auerswald under 42 U.S.C. para 1985 and stated it would dismiss the Bivens claim against Auerswald under the doctrine of "constitutional insubstantiality" unless Solomon submitted evidence within 30 days to support his contention that Auerswald is or was alive, is or was a federal official, and has had harmful contact with Solomon.

Solomon moves to reargue his motion for a preliminary injunction. He also seeks orders (1) pursuant to Rule 201 of the Federal Rules of Evidence taking judicial notice of the fact that Auerswald has repeatedly appeared on television and discussed Solomon, and (2) pursuant to Rule 4 (c) (2) (C) (i) of the Federal Rules of Civil Procedure directing the manner in which the summons and complaint may be served on Auerswald given that Solomon does not know Auerswald's address.

I.

The court has carefully considered and denies Solomon's motion to reargue.

Insofar as he contends that the government did not timely answer his "Request for Admission Under Rule 36," this court considered that contention at oral argument on March 5, 1993 and ordered the government to answer the request within 30 days. The

government complied with that order. His contention that his requests are deemed admitted, therefore, lacks merit.

Insofar as he contends that Auerswald conspired on numerous occasions in violation of 42 U.S.C. para 1985, this claim suffers the same infirmity as his Bivens claim. See Solomon v. United States, Civ. No. 92-2653, slip op. at 10-11 (E.D.N.Y. June 2, 1993) (concluding that "[b]ased on the mystical manner in which Auerswald is described, together with the fantastic misdeeds he is alleged to have performed, this court sees no reason to believe that Auerswald exists or, if so, that he is a federal official who caused harm to Solomon"). This court sees no reason to believe that , if Auerswald exists, he participated in the alleged conspiracies.

II.

In its previous order the court directed Solomon to submit evidence by July 2, 1993 in support of his claim that Auerswald is or was alive, is or was a federal official, and has had harmful contact with Solomon. Evidently, Solomon is unable to adduce any evidence to support any part of his allegations.

Accordingly, the court concludes that it lacks jurisdiction under Bivens or 42 U.S.C. para 1985 because the complaint asserts wholly insubstantial claims. See Hagans v. Lavine, 415 U.S. 538, 534-39, 94 S.Ct. 1372, 1378-80 (1974).

III.

The case is dismissed.

So ordered.

Dated: Brooklyn, New York
August 18, 1993

Eugene H. Nickerson, U.S.D.J.

APPENDIX F

Article IV, Section2 (1) The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amendment IV " The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall no be violated, and . . . ."

Amendment V ". . . . . nor be deprived of life, liberty , or property, without due process of law; . . . . . "

Amendment XIV, Section1 ". . . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty , or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C.para 1985 (3)"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another,for the purpose of depriving , either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;. . . . . .whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived

may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."